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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/631,511	08/03/2000	Behnam S. Katibian	B67933 (044368/0372)	9161
33649	7590	10/31/2005		
Mr. Christopher John Rourk GODWIN GRUBER, LLP 1201 Elm Street, Renaissance Tower DALLAS, TX 75270			EXAMINER ALI, SYED J	
			ART UNIT 2195	PAPER NUMBER

DATE MAILED: 10/31/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/631,511	Applicant(s) KATIBIAN ET AL.	
	Examiner Syed J. Ali	Art Unit 2195	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 August 2005.
 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21-29, 31-39, 41 and 43 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) ☐ Claim(s) _____ is/are allowed.
 6) ☒ Claim(s) 21-29, 31-39, 41 and 43 is/are rejected.
 7) ☐ Claim(s) _____ is/are objected to.
 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This office action is in response to the amendment filed August 16, 2005. Claims 21-29, 31-39, 41, and 43 are presented for examination.

2. The text of those sections of Title 35, U.S. code not included in this office action can be found in a prior office action.

Claim Rejections - 35 USC § 103

3. **Claims 21-29, 31-39, and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rostoker et al. (USPN 6,111,863) (hereinafter Rostoker).**

4. As per claim 21, Rostoker teaches the invention as claimed, including a system for processing audio and video for a wireless handset comprising:

controller means for generating priority data (col. 4 lines 30-32);

a plurality of channel buffers, wherein each channel buffer represents a logically separate channel of data (col. 4 lines 32-35); and

transmission buffer means for receiving priority data and data from one or more of the channel buffers and storing the data from the channel buffers in a buffer (col. 5 lines 24-27), where the number of channel buffers to receive data from and the amount of data to be received from each channel buffer is determined by the priority data (col. 4 lines 47-58; col. 5 lines 28-32).

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5. It is noted that Rostoker does not specifically state that the transmitter is designed as a transmission buffer. Rostoker simply refers to the portion of the unit that transmits the signal as a “transmitter.” However, if a buffer is understood as being a memory area that stores data, it would have been obvious to one of ordinary skill in the art that the transmitter of Rostoker is essentially the same as the claimed transmission buffer. Both take input in the form of priority data to determine which buffers, i.e. audio, video, or data, to read from and how much data to read from each. The data is then sent to the network via an uplink. Despite the small difference in wording, the claimed transmission buffer is essentially the same as the transmitter in Rostoker. Furthermore, it is well known in the art, and therefore would have been obvious to one of ordinary skill in the art, that wireless communication devices typically utilize some sort of buffer to transmit data. For instance, Farazmandia et al. (USPN 6,728,795) indicates that the use of at least a one to two byte buffer to transmit data is well known and expected in the art of wireless devices (col. 1 lines 39-50).

6. As per claims 22-24, Rostoker teaches the invention as claimed, including the system of claim 21 wherein the plurality of channel buffers further comprises an audio data buffer, a video data buffer, and a control data buffer (col. 4 lines 30-35).

7. As per claims 25-26, Rostoker teaches the invention as claimed, including the system of claim 21 wherein the controller means generates priority data based on transmission channel bandwidth (col. 4 lines 30-32, 35-41) or processor capacity of a wireless handset processor (col. 5 line 59 - col. 6 line 13).

8. As per claim 27, Rostoker teaches the invention as claimed, including the system of claim 21 further comprising:

wherein the plurality of channel buffers further comprises an audio data buffer, a video data buffer, and a control data buffer (col. 4 lines 30-35); and

wherein the controller means generates priority data based on transmission channel bandwidth (col. 4 lines 30-32, 35-41) and on processor capacity of a wireless handset processor that changes the amount and sequence of data from the audio data buffer, the video data buffer, and the control data buffer that is stored in the transmission buffer means (col. 4 lines 47-58; col. 5 lines 28-32).

9. As per claim 28, Rostoker teaches the invention as claimed, including the system of claim 21 wherein the controller means receives user control data and uses the user control data to generate the priority data (col. 5 lines 8-18).

10. As per claim 29, Rostoker teaches the invention as claimed, including the system of claim 27 wherein the controller means receives user control data (col. 5 lines 16-18) and uses the user control data to generate the priority data that changes the amount and sequence of data from the audio data buffer, the video data buffer, and the control data buffer that is stored in the transmission buffer means (col. lines 8-16).

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11. As per claim 31, Rostoker teaches the invention as claimed, including a method for processing audio and video data for a wireless handset comprising:

generating priority data (col. 4 lines 30-32, 35-41);

determining the number of channel buffers to receive data from based on the priority data (col. 4 lines 47-58; col. 5 lines 28-32); and

determining the amount of data to be received from each channel buffer by the priority data (col. 4 lines 47-58; col. 5 lines 28-32);

storing data in a plurality of channel buffers, where each channel buffer represents a logically separate channel of data (col. 4 lines 30-35); and

storing the data from each selected channel buffer in a transmission buffer (col. 5 lines 28-35).

12. As per claims 32-34, Rostoker teaches the invention as claimed, including the method of claim 31 wherein storing data in the plurality of channel buffers further comprises storing the data in an audio data buffer, a video data buffer, and a control data buffer (col. 4 lines 30-35).

13. As per claim 35-36, Rostoker teaches the invention as claimed, including the method of claim 31 wherein generating priority data comprises generating priority data based on transmission channel bandwidth (col. 4 lines 30-32, 35-41) or processor capacity of a wireless handset provider (col. 5 line 59 - col. 6 line 13).

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14. As per claim 37, Rostoker teaches the invention as claimed, including a method for processing audio and video data for a wireless handset comprising:

generating priority data based on transmission channel bandwidth and processor capacity of a wireless handset processor (col. 4 lines 30-32, 35-41);

storing data in an audio data buffer, a video data buffer, and a control data buffer (col. 4 lines 30-35);

determining a number of channel buffers to receive data from based on the priority data (col. 4 lines 47-58; col. 5 lines 28-32); and

determining an amount and a sequence of data from the audio data buffer, the video data buffer, and the control data buffer that is to be stored in a transmission buffer based on the priority data (col. 4 lines 47-58; col. 5 lines 28-32); and

storing the data from each selected channel buffer in the transmission buffer (col. 5 lines 28-35).

15. As per claim 38, Rostoker teaches the invention as claimed, including the method of claim 37 further comprising:

receiving user-entered control data (col. 5 lines 16-18); and

generating the priority data from the user-entered control data (col. 5 lines 8-16).

16. As per claim 39, Rostoker teaches the invention as claimed, including the method of claim 37 further comprising:

receiving user control data (col. 5 lines 16-18); and

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generating priority data that changes the amount and sequence of data from the audio data buffer, the video data buffer, and the control data buffer that is stored in the transmission buffer from the user control data (col. 4 lines 47-52; col. 5 lines 8-16).

17. As per claim 41, Rostoker teaches the invention as claimed, including the system of claim 27, further comprising priority data associated with each channel buffer, wherein audio data can have a lower priority than video data or control data (col. 4 lines 47-52).

18. **Claim 43 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rostoker in view of Leavy et al. (USPN 5,608,651) (hereinafter Leavy).**

19. As per claim 43, Leavy teaches the invention as claimed, including the method of claim 37, wherein determining the amount and the sequence of data from the audio buffer, the video data buffer, and the control data buffer that is to be stored in the transmission buffer based on the priority data further comprises allowing only null data from one of the audio data buffer, the video data buffer, or the control data buffer to be stored in the transmission buffer if the associated buffer is empty, priority is allocated only to the associated buffer, and data is present in the other buffers (col. 8 lines 44-64). More specifically, Leavy teaches that priority among channels can be assigned in many ways, including but not limited to, transmitting either audio or video exclusively based on priority data.

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20. It would have been obvious to one of ordinary skill in the art to combine the prioritized data processing system of Rostoker with the various priority policies discussed by Leavy, as it would allow a great deal of flexibility to a user in choosing how the handset processes data. For instance, where the user is only interested in engaging in a high-quality telephone call without the interruptions or bottlenecks that additional data streams may incur, an “exclusive” priority scheme could be selected (Leavy col. 8 lines 62-64).

Response to Arguments

21. **Applicant’s arguments filed August 16, 2005 have been fully considered but they are not persuasive.**

22. Applicant’s current amendment limits the controller and transmission buffer previously claimed to “controller means” and “transmission buffer means”. Thus, Applicant demands a showing in Rostoker of the corresponding structure, as the claims are presented in means-plus-function form.

23. First, with respect to the “controller means”, the controller described in Rostoker fulfills both the means and function requirement of the claim. Attention is hereby directed to Fig. 2 element 22 of Rostoker, which identifies the controller, which performs the same function as the claimed “controller means”. Secondly, the “transmission buffer means” has been addressed above in reference to paragraph 5. Applicant’s arguments that the rejection is flawed as not inherently disclosing a buffer is unfounded, as the rejection under § 103 is that implementing the

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transmitter with buffering capacity is an obvious modification. Inherency issues fall under anticipation, while the rejection states that the claimed invention is obvious over Rostoker.

24. Applicant submits, "*the Examiner has read limitations out of the claim.*" Arguments are presented relating to the features allegedly being read out of the claims, i.e. the priority data requires that data only be taken from the buffers for which priority is allocated. If those buffers are empty and other buffers have data, no data is transmitted.

25. However, there are several factors that indicate that this feature is not inherent in the claims, but rather require reading limitations from the specification into the claims. Alternatively, it requires ignoring portions of the specification that also support the claims. For instance, several embodiments are shown with respect to how data is transferred from the buffers based on the priority data. Certainly, one of the embodiments supports the arguments presented by Applicant, that the priority data can signal an "audio only" mode, such that no video data will be transmitted as long as audio data has priority (Specification, pg. 9 lines 10-29).

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26. However, to say that this embodiment is necessarily the only possible interpretation renders the other embodiments utterly meaningless, or else Applicant's arguments must fail. Other embodiments (Specification, pg. 8 line 29 - pg. 9 line 9; pg. 9 line 30 - pg. 10 line 14) indicate that the priority data can give higher priority to one type of data over the other, sacrificing quality of the secondary data type. Furthermore, Applicants adding new claim 43, which explicitly describes the exclusive mode of operation, is strong evidence that Applicant does not believe these features to be inherent in the independent claims. If the features were inherent, there would be no reason to add the new claim, and the new claim would be of improper dependent form for failing to limit the parent claim. It is highly dubious that the independent claims are intended to be read as only covering one of the multiple embodiments described in Applicant's specification.

27. Applicant argues that Rostoker fails to teach several claimed limitations, including "determining the number of channel buffers to receive data from based on the priority data", "determining the amount of data to be received from each channel buffer by the priority data", and "storing the data from each selected channel buffer in a transmission buffer."

28. First of all, the basis for Applicant's arguments is that Rostoker fails to teach processing data from the buffers in a manner consistent with the reading that data is only to be read from buffers that are allocated priority. This interpretation of the claims is narrower than actually presented, and discussed at length above in paragraphs 25-26.

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29. Regarding the first limitation alleged to be absent from Rostoker, the determination of the number of channel buffers to receive data from is made in a manner that is consistent with the claims and Applicant's specification. Providing one data type with a primary priority and the other data type(s) with secondary priority is perfectly consistent with the embodiment of Applicant's invention shown at pg. 9 line 30 - pg. 10 line 14 of the Specification. That data is taken from the other buffers if the primary and/or secondary buffers are empty does not render the initial assignment of priorities meaningless. Whether Rostoker determines the amount of data to receive based on an allocation of bandwidth, a number of bytes, or any other factor has no bearing on the fact that Rostoker discusses taking data from the buffers in a hierarchical manner, i.e. as designated by the priority data. Applicant is giving this claim limitation far narrower scope than the claim reflects. Finally, the portion of the claim relating to a "transmission buffer" has been addressed as length above in paragraph 5. It is not Examiner's contention that Rostoker inherently teaches this feature. Rather, it is an obvious modification of Rostoker based on the well-known and accepted methods of processing data in wireless devices. A supporting reference has been provided, showing that this is indeed a well-known feature of the prior art.

Conclusion

30. Applicant's amendment necessitated the new grounds of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO**

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MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

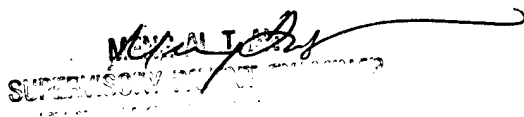
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Syed J. Ali whose telephone number is (571) 272-3769. The examiner can normally be reached on Mon-Fri 8-5:30, 2nd Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Meng-Ai T. An can be reached on (571) 272-3756. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Syed Ali
October 17, 2005



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